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No. 668

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In the Supreme Court of the United States

OCTOBER TERM, 1958

WILLIAM LEIGHTON, *Petitioner*

v.

WILLIAM P. ROGERS, Attorney General of the United States, as Successor to the Alien Property Custodian, et al.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENT WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES, IN OPPOSITION

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OPINIONS BELOW

There were no opinions below. Petitioner's appeal from orders of the District Court, entered without opinion on April 21, 1958 and July 9, 1958, denying his motions for "permissive joinder and/or intervention," and to vacate the order of April 21, 1958, respectively (R. 299, 328), was dismissed by the Court of Appeals, also without an opinion.

JURISDICTION

The order of the Court of Appeals was entered on October 29, 1958 (R. 349). The petition for a writ of certiorari was filed on January 26, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the trial court properly denied leave to intervene to petitioner who asserts no legal interest in the subject matter of the action and who has no economic stake whatever in the outcome of the litigation.

STATUTES INVOLVED

The pertinent provisions of the Trading with the Enemy Act are set out in the Appendix, *infra*, pp. 7-9.

STATEMENT

The litigation in which petitioner seeks to intervene is a suit under Section 9(a) of the Trading with the Enemy Act by respondent Societe Internationale pour Participations Industrielles et Commerciales, S.A., a Swiss corporation, also known as I.G. Chemie or Interhandel. Societe Internationale's suit seeks the return of vested stock in General Aniline & Film Corporation of New York. See *Societe Internationale* v. *Rogers*, 357 U.S. 197. Respondents Attenhofer, Kaufman and Klingler represent groups of stockholders in Societe Internationale who intervened in the action pursuant to this Court's decision in *Kaufman* v. *Societe Internationale*, 343 U.S. 156.

The complaint proposed to be filed below by petitioner (R. 103-112) is replete with confused and con-

tradictory allegations, as is his petition. In count I, petitioner prays that "the Court adjudge and decree that a valid copyright subsists in this complaint as written and authored by plaintiff [petitioner]" (R. 104). Counts II, III and IV are based upon reported proceedings in the *Interhandel Case* (*Switzerland* v. *United States of America*), pending before the International Court of Justice at The Hague.[1] The allegations in these counts are followed with a prayer that the Swiss Government "be summoned to appear as an indispensable party to this action" (R. 108) and that the parties be enjoined from participating in any proceedings before the International Court, without leave of the District Court (R. 109). Petitioner also prays that the Secretary of State be held to be an indispensable party to the action and that the parties be enjoined "from briefing or arguing before the International Court of Justice" any matters in issue between the parties hereto falling "within the domestic jurisdiction of the United States" and which are thus within the exclusive jurisdiction of the District Court (R. 110-111). And asserting that counsel for respondent Societe Internationale represent the Swiss Government, "the real party in interest * * * in addition to plaintiff Interhandel," petitioner requests that they be required to register under the Foreign Agents Registration Act of 1938, as amended (R. 112).

Petitioner's motion for "permissive joinder and or intervention" was denied by the District Court on

[1] There the Government of Switzerland seeks a declaration by the International Court that the United States is under a treaty obligation to return the vested assets claimed by Societe Internationale or to submit the matter of the seizure and retention of the property to arbitration or conciliation. (see R. 127, 129)

April 21, 1958 (R. 299). That court also denied petitioner's motion to vacate the order of April 21, 1958 (R. 328). And his appeal from the orders below was dismissed by the Court of Appeals on the joint motion of all the respondents hereto (R. 342-346, 349).

ARGUMENT

1. Petitioner does not meet the requirements for intervention under Rule 24 of the Federal Rules of Civil Procedure. No claim is, or could be, made that he is entitled to intervene as a matter of right, and no allegation is made that the District Court abused its discretion in denying permissive intervention under Rule 24(b).

The proposed complaint does not assert that petitioner has any interest in the subject matter of the action, either directly by virtue of some claim to the vested property or indirectly by reason of stock ownership in Societe Internationale. Moreover, the complaint presents no question of law or fact in common with the claims and defenses of the parties to the action below. There the primary issues are whether respondent Societe Internationale has title to the General Aniline stock and the intervenors to their stock in Societe Internationale and whether the latter or its stockholders were enemy-tainted. See *Societe Internationale* v. *Rogers, supra,* at 199. The e issues are not even touched upon in the proposed complaint.

The petitioner is a complete stranger without any economic stake in the outcome of the litigation and without any status in the case. His interest seems to consist solely of his desire to see that "complete relief" is "accorded between those already parties" (R. 102), and he seems to believe that this may be accom-

plished by having the District Court exercise jurisdiction over the parties and control the proceedings in the *Interhandel Case* in the International Court of Justice. Furthermore, petitioner does not allege or otherwise show that he is entitled to any relief whatever against any party to this litigation, and quite obviously the trial court does not have jurisdiction to grant the relief prayed for in the complaint. In short, the proposed complaint does not present a justiciable cause of action.

The orders below denying permissive intervention are not appealable and, in the absence of any contention that the District Court abused its discretion in denying leave to intervene, they are not subject to review here. *United States* v. *California Canneries*, 279 U.S. 553, 556; *Railroad Trainmen* v. *B. & O. R. Co.*, 331 U.S. 519, 524-525.

2. Even if petitioner's cause of action were justiciable, his proposed intervention is not within the authorization of Section 9(a) of the Trading with the Enemy Act (Appendix, *infra*, pp. 8-9), available only to one "claiming any interest, right, or title" in vested property. The remedy provided by Section 9(a) is exclusive, with one exception not relevant here.[2] Section 7(c) (Appendix, *infra*, p. 7); *Clark* v. *Uebersee Finanz-Korp.*, 332 U.S. 480, 487; *Becker Co.* v. *Cummings*, 296 U.S. 74, 79; *Ahrenfeldt* v. *Miller*, 262 U.S. 60.

As has been stated, Rule 24 "must be given application consistently with the limitations placed by Con-

[2] Section 34 permits suits for review of the administrative determination of claims asserted by creditors of enemies whose property has been vested.

gress upon litigation under the Trading with the Enemy Act." *Von Opel* v. *Uebersee Finanz Korporation,* 225 F. 2d 530, 531, n. 4 (C.A. D.C.), certiorari denied, 350 U.S. 935. Since petitioner has no cognizable interest in the vested property, his proposed action is not within the terms of the governmental consent to suit under the Act. Thus, the District Court properly denied his motion for leave to intervene. *La Mettrie* v. *James,* 6 F. 2d 479 (C.A. D.C.), affirmed, 272 U.S. 731; *Berger* v. *Ruoff,* 195 F. 2d 775 (C.A. D.C.), certiorari denied, 343 U.S. 950; *Bantel* v. *McGrath,* 215 F. 2d 297 (C.A. 10); *Von Opel* v. *Uebersee Finanz Korporation, supra.*

CONCLUSION

The petition for certiorari is plainly without merit and should be denied. We are authorized to state that respondent-plaintiff Societe Internationale and respondents-intervenors Attenhofer, Kaufman and Klinger concur in the views set forth herein.

Respectfully submitted,

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Solicitor General.

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FEBRUARY 1959.

APPENDIX

Trading with the Enemy Act, 40 Stat. 411, as amended, 50 U.S.C. App. 1, *et seq.*:

* * * *

Section 7

* * * *

(*e*) If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

* * * *

The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter covered, transferred, assigned, delivered or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States.

* * * *

Section 9

* * * *

(a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the United States District Court for the District of Columbia or in the district court of the United States for the district in which claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be,

shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

* * * * *

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